UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 31

Coca Cola Bottling Company

Employer

and

Case: 31-RD-1564

William Diaz, an Individual

Petitioner

and

Teamsters Local 848

Union

ORDER DISMISSING PETITION

Pursuant to a petition filed on December 11, 2006, in connection with the above-captioned matter, a Notice of Representation Hearing issued on that same date. No hearing has been held to date. Due to charges filed in Cases 31-CA-28099 and 31-CA-28152, the processing of the petition was blocked. The Petition is being dismissed for three reasons:

<u>First:</u> The Petition was received on December 11, 2006. At the time the Petition was filed, the then-current collective bargaining agreement between the Employer and Union was in effect from February 7, 2004 through February 11, 2007, which is more than three years. \(^1/\) Contracts having a duration longer than three years will not serve to bar an election past the three year period; however, all other contract bar rules apply. *General Cable Corp.*, 139 NLRB 1123

¹/ The front cover of the agreement shows the term as "February 7, 2004 – February 11, 2007." Article 31: Term of Agreement on page 20 of the agreement states, in pertinent part, "The Agreement shall remain in full force and effect from February 7, 2004 through February 11, 2007. . ." Although the contract was executed on June 9, 2004, there is nothing in the agreement establishing that the term of the agreement is anything other than February 7, 2004 through February 11, 2007. It is this contract term that an employee must rely on in order to determine when a decertification petition can be filed. See, *South Mountain Healthcare*, 344 NLRB No. 40 (2005) and *Cooper Tire Co.*, 181 NLRB 509 (1970).

(1962). In addition, the "window period" for filing a decertification petition is calculated based on the third anniversary of the contract and not the expiration of the contract. *Union Carbide Corporation*, 190 NLRB191 (1971). The 60 to 90 day window period for filing the instant petition was November 11, 2006 through December 9, 2006.²/ Since the petition was not received until December 11, 2006, it was untimely.

Second, even assuming that the Petition was timely filed, the showing of interest was not timely received. The initial showing of interest submitted with the petition on December 11, 2006, did not have the proper heading and was, therefore, rejected. On December 11, 2006 the Petitioner was given 48 hours to submit an adequate showing of interest. The Region received a facsimile copy of the new showing of interest on December 13, 2006. The original new showing of interest was received by mail on December 20, 2006. Section 11024.1 of the Casehandling Manual, Part Two, Representation Cases (Manual), and Section 102.114 of the Board's Rules and Regulations (Regulations) both provide that the showing of interest may not be submitted by facsimile transmission. In addition, Section 11024.1 of the Manual and Section 101.17, Statements of Procedure in the Regulations both state that the showing of interest must be submitted no later than the last day on which the petition may be timely filed. Even assuming that at the time the Petition was filed the then-current contract was a three-year contract expiring on February 11, 2007, the latest date for filing the petition during the 60 to 90 day "window period" would have been December 13, 2006. Since the original new showing of interest was not received until December 20, 2006, it was untimely.

Third: Even assuming that the Petition was timely filed and the original showing of interest was timely received, an administrative investigation of the Petitioner's showing of interest was conducted during the same time that the blocking unfair labor practice charges were

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²/ The collective bargaining agreement was initially considered a three-year agreement with an expiration date of February 11, 2007. Later, it was determined that the agreement was effective for 3 years and 4 days, thereby making it a contract of more than three years duration.

investigated. The administrative investigation revealed that the Employer's supervisors participated in the solicitation of signatures for the new showing of interest thereby "tainting" several signatures. Due to the supervisory taint of signatures for the showing of interest, the petition is no longer supported by the required 30% showing of interest. Based on all of the above-rationale, I conclude that further processing of the instant petition is unwarranted. Accordingly,

IT IS ORDERED that the petition for decertification be, and it hereby is, dismissed.³/

Signed at Los Angeles, California this 9th day of November 2007.

/s/ James J. McDermott

James J. McDermott, Regional Director National Labor Relations Board Region 31

The request for review and any request for extension of time must include a statement that a copy has been served on this Office and on each of the other parties to this proceeding in the same or a faster manner as that utilized in filing the request with the Board. In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

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³/ Pursuant to Section 102.71 of the National Labor Relations Board's Rules and Regulations, any party may obtain a review of this action by filing a request therefore with the National Labor Relations Board, Washington, D.C. 20570. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. The request for review (eight copies) must be received by the Executive Secretary of the Board by close of business November 23, 2007. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. A request for extension of time should be submitted to the Executive Secretary in Washington, and a copy of any such request for extension of time should be submitted to this Office and to each of the other parties to this proceeding.